

EXHIBIT 42

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF WEST VIRGINIA**

KEITH REED, LISA DOLENCE,
ELIZABETH SCHENKEL, EMILY WINES,
MARK GARAN, CHRISTINA LUCAS, and
AUGUST ULLUM, individually and on
behalf of others similarly situated,

Plaintiffs,

v.

ALECTO HEALTHCARE SERVICES LLC,
and ALECTO HEALTHCARE SERVICES
WHEELING, LLC d/b/a OHIO VALLEY
MEDICAL GROUP and d/b/a OVMC
PHYSICIANS,

Defendants.

Case No. 5:19-cv-00263-JPB

Judge John Preston Bailey

CLASS ACTION

**DECLARATION OF MARK GARAN
IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

I, Mark Garan, declare and state:

1. I am a named Plaintiff in this action against Defendants (collectively, "Alecto") for violations of the Worker Adjustment and Retraining Notification Act of 1988 (the "WARN Act"), 29 U.S.C. §§ 2101 *et seq.*
2. I reside in Ohio County, West Virginia.
3. I began working at Ohio Valley Medical Center ("OVMC") as a full-time registered nurse in 2017.
4. In August 2019, Alecto announced in a press release that OVMC had "decided to begin the process to close," and that "the closure process for facilities like OVMC...typically takes 60 to 90 days." (A copy of Alecto's August 7, 2019 press release is attached as **Exhibit A.**)
5. Less than a month later, Alecto abruptly announced shutdown of all OVMC acute and emergency services effective 11:59pm on September 4, 2019. (A copy of Alecto's September 3, 2019 press release is attached as **Exhibit B.**)
6. Due to OVMC's closure, I lost my job as a registered nurse.

7. I was forced to take another position in mid-September, 2019 because when OVMC permanently shut down medical services there were no more nursing positions and I had to provide for my family. My departure was not voluntary.

8. It is my understanding that the WARN Act requires employers to provide 60 days' notice prior to ordering a plant closure, but Alecto did not provide me with 60 days' notice.

9. I believe that Defendants violated the WARN Act by failing to provide me and other employees at OVMC with 60 days' notice prior to ordering the closure of OVMC.

10. I have agreed to serve as a named representative in this litigation and to have Stember Cohn & Davidson-Welling, LLC, Cassidy, Cogan, Shapell & Voegelin, LC, Risovich Law Offices, PLLC, and Mountain State Justice, Inc., serve as Class Counsel.

11. I understand that, as a named Plaintiff, I am representing other former OVMC employees, and that it is my duty and responsibility to vigorously pursue Class member claims.

12. I share the same interests as other Class members in having Alecto pay wages and benefits owed for violating the WARN Act, and I know of no reason why my interests would conflict with any other putative Class member.

13. As a named Plaintiff, I am involved and interested in this matter. I have been in contact with and have consulted with my attorneys concerning this case, and I have participated in this litigation by providing information to them as needed.

I declare under penalty of perjury that the foregoing is true and correct, and that I have personal knowledge of the facts contained herein and, if called upon to testify, I could and would competently testify thereto.

Executed on this 14th day of March, 2022 in Ohio County, West Virginia.



Mark Garan

EXHIBIT A



**Ohio Valley Medical Center and East Ohio Regional Hospital Make Difficult Decision to
Begin Closure Process**

WHEELING, WV – August 7, 2019 – Ohio Valley Medical Center in Wheeling, West Virginia (“OVMC”) and East Ohio Regional Hospital in Martins Ferry, Ohio (“EORH”) today announced that after a thorough evaluation of all available options, losses of more than \$37 Million over the past two years, and an exhaustive but unsuccessful search for a strategic partner or buyer, OVMC and EORH have decided to begin the process to close both OVMC and EORH. OVMC and EORH will immediately begin working with federal, state, and local agencies to develop a definitive timeline for the closure of both facilities. The closure process for facilities like OVMC and EORH typically takes 60 to 90 days and OVMC and EORH will share a definitive timeline with all interested parties in the coming days.

The decision to begin the closure process was based on, among other things, the following factors:

- OVMC, EORH, and their physician practices have lost more than \$37 Million over the past 2 years as they struggled to overcome declining volumes, declining reimbursement, and the substantial harm caused by the conduct alleged by the Government in *United States of America ex. rel. Louis Longo v. Wheeling Hospital, Inc., R & V Associates, LTD., and Ronald L. Violi*, United States District Court for the Northern District of West Virginia Case No. 5:19-cv-00192-JPB.



- OVMC and EORH have been unable to compete with Wheeling Hospital and its business practices including, without limitation, those alleged in *United States of America ex. rel. Louis Longo v. Wheeling Hospital, Inc., R & V Associates, LTD., and Ronald L. Violi*, United States District Court for the Northern District of West Virginia Case No. 5:19-cv-00192-JPB.
- OVMC requires substantial improvements to its physical plant and the continued losses at OVMC and EORH do not leave funds available to complete such improvements.
- Despite their exhaustive efforts to identify a strategic partner or buyer for OVMC and/or EORH, which included discussions with more than 15 different national, regional, and local healthcare systems or providers, OVMC and EORH have been unable to locate a strategic partner or buyer for one or both of the facilities.

As they begin the closure process, OVMC and EORH will also continue their efforts to identify opportunities, alternatives, and options for both facilities. OVMC and EORH will also work closely with their employees, physicians, and patients as well as community leaders to ensure an orderly closure process for both facilities.

EXHIBIT B

Ohio Valley Medical Center will Suspend Acute and Emergency Medical Services on September 4, 2019

(Wheeling, WVa.) - Ohio Valley Medical Center in Wheeling, WV ("OVMC") today announced that after a thorough evaluation of all available options, losses of more than \$37 million over the past two years, an exhaustive, but unsuccessful, search for a strategic partner or buyer, and a lack of interest from the State of West Virginia, the hospital will suspend Acute and Emergency Medical services at 11:59pm on September 4, 2019.

OVMC takes this unwanted, yet unavoidable, step based upon a lack of interest from potential purchasers, as well as an overall lack of response from state officials, to preserve access to healthcare in the Northern Panhandle, as well as saving the more than 750 jobs that will be lost upon closure of OVMC.

Daniel Dunmyer, Chief Executive Officer of OVMC, indicated that: "Although we made every effort to interest WVU Medicine and Wheeling Hospital in taking over part of our downtown campus, they simply were not interested in our facilities that provide acute and emergency medical services. We were also contacted by officials from the State of West Virginia, who toured the campus to evaluate the buildings for other uses; however, we understand that nothing will be done to save acute and emergency medical services at OVMC. It's very unfortunate. Our Federal Senators, Congressman, and local officials, including our State legislative delegation, Ohio County Commission, Wheeling's May and City Council have and are still diligently working along with us to find a solution."

As indicated in August, the decision to begin the closure process is based upon the following factors:

OVMC and its physicians practices have lost more than \$37 million over the past 2 years as they struggled to overcome declining volumes, declining reimbursement, and the substantial harm caused by the conduct alleged by the Government in *United States of America ex. rel. Louis Longo v. Wheeling Hospital, Inc., R & V Associates, LTD., and Ronald L. Violi, United States District Court for the Northern District of West Virginia Case No. 5:19-cv-00192-JPB*.

OVMC has been unable to compete with Wheeling Hospital and its business practices including, without limitation, those alleged in *United States of America ex. rel. Louis Longo v. Wheeling Hospital, Inc., R & V Associates, LTD., and Ronald L. Violi, United States District Court for the Northern District of West Virginia Case No. 5:19-cv-00192-JPB*.

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